

IN THE UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF ALABAMA  
SOUTHERN DIVISION

IN RE:	)	
	)	
RUBY STREETER,	)	
	)	
PLAINTIFF,	)	CASE NUMBER: 1:07-cv-97
	)	
vs.	)	
	)	
OFFICE OF DOUGLAS R. BURGESS, LLC., &	)	
DOUGLAS R. BURGESS, ESQ., INDIVIDUALLY,	)	
	)	
DEFENDANTS.	)	

**PLAINTIFF'S MOTION TO ALLOW DISCOVERY REGARDING JURISDICTION**  
**AND REQUEST FOR EXTENSION OF BRIEFING SCHEDULE PENDING**  
**COMPLETION OF DISCOVERY**

COMES NOW, the Plaintiff, Ruby Streeter, by and through her undersigned attorney, and moves this Honorable Court to allow jurisdictional discovery as it pertains to All Debt Traders, LLC. and Portfolio Partners & GMK, Inc. The Plaintiff asserts this motion pursuant to Fed. R. Civ. Proc. 26(d)(2). The Plaintiff seeks a Court Order permitting her to conduct jurisdictional discovery in the form of depositions, regarding Defendants, All Debt Traders, LLC. and Portfolio Partners & GMK, Inc., to determine the extent which this Court has personal jurisdiction over said Defendants. Furthermore, the Plaintiff seeks a Court order permitting her to depose Defendants, Douglas R. Burgess, Individually (hereinafter referred to as "Burgess"), Office of Douglas R. Burgess, LLC., and Law Office of Douglas R. Burgess, LLC., in its corporate capacity (hereinafter, "Burgess, LLC."), to determine the extent which this Court has personal jurisdiction over All Debt Traders, LLC. and Portfolio Partners & GMK, Inc. As grounds for this motion, the Plaintiff states as follows:

1. On February 1, 2007, the Plaintiff filed the above-styled action asserting violation of Fair Debt Collection Practices Act (hereinafter, "FDCPA") and various supplemental state law claims.

2. On June 16, 2007, this Honorable Court entered an Order Setting Trial Date and Scheduling Order. The first discovery cutoff was set for November 23, 2007.

3. During the first discovery period, counsel for the Plaintiff and counsel for Burgess agreed that the Plaintiff's attorney would travel to Rochester, New York to depose Douglas R. Burgess. The deposition was scheduled for October 12, 2007. After the close of business, on October 10, 2007, the Defendant unilaterally cancelled Burgess' deposition by facsimile notice to Plaintiff's counsel. In the early morning hours of October 11, 2007, Plaintiff's counsel learned of the cancellation as he arrived at the Montgomery, Alabama airport to catch a flight to New York for Burgess' deposition.

4. Prior to the scheduled deposition, Plaintiff's counsel spent almost two (2) working days preparing for the deposition and investigating the multiple Defendants' involvement in the debt collection scheme. Plaintiff's counsel was fully prepared to question Burgess about the other Defendants' involvement.

5. Because Burgess cancelled the scheduled deposition, Plaintiff's counsel was unable to question Burgess regarding the other Defendants' involvement in the debt collection scheme.

6. Without the benefit of deposing Burgess regarding the debt collection scheme, the Plaintiff filed a Motion to Amend her Complaint on October 15, 2007, to include additional parties including Douglas J. MacKinnon (hereinafter, "MacKinnon") and Robert Van De Mark.

7. On February 21, 2008, this Honorable Court granted the Plaintiff's Motion to Amend Complaint.

8. On February 28, 2008, the Plaintiff perfected service on Douglas J. MacKinnon.

9. On or about March 29, 2008, Defendant, All Debt Traders, LLC., was served with a copy of the First Amended Complaint and the Summons (Doc. No. 60).

10. On or about March 3, 2008, Defendant, Portfolio Partners & GMK, Inc., was served with a copy of the First Amended Complaint and the Summons (Doc. No. 61).

11. On or about June 11, 2008, this Honorable Court permitted the Plaintiff an opportunity to conduct jurisdictional discovery as to Defendants, MacKinnon and Burgess (Doc. 90).

12. In its Court Order, this Honorable Court allowed the Plaintiff to conduct a telephonic deposition of MacKinnon and permitted Plaintiff to depose Burgess prior to responding to MacKinnon's Motion to Dismiss based on personal jurisdiction.

13. A dispute has arisen as it pertains to whether the Plaintiff may depose Burgess, individually, and in his corporate capacity. Therefore, the Plaintiff requests that this Honorable Court allow her to depose Burgess both individually and in his corporate capacity to determine the extent of personal jurisdiction over the moving Defendants.

14. Upon information and belief, Defendants, MacKinnon, Burgess, and Burgess, LLC., are key witnesses for determining personal jurisdiction as to all Defendants.

15. Despite the Court's Order allowing the Plaintiff to depose Burgess and MacKinnon, neither Defendant has provided any available deposition dates.

16. On June 11, 2008, after this Honorable Court permitted the Plaintiff to conduct jurisdictional discovery from Burgess and MacKinnon, the undersigned contacted Burgess and MacKinnon's attorney to arrange a deposition date. Thereafter, the undersigned contacted Burgess' attorney by electronic mail or telephone on approximately sixteen (16) occasions to obtain Burgess'

deposition. To date, Burgess has yet to provide a date in which he will consent to a deposition. See accumulation of emails and correspondence from June 11, 2008, through July 15, 2008.

17. The Plaintiff also requests an opportunity to depose the 30(b)(6) Corporate Representatives of All Debt Traders, LLC. and Portfolio Partners & GMK, Inc.

18. The deposition should determine the extent, if any, to which this Court has personal jurisdiction over the moving Defendants.

WHEREFORE, the Plaintiff moves this Honorable Court to permit jurisdictional discovery consisting of depositions of the 30(b)(6) Corporate Representatives of All Debt Traders, LLC. and Portfolio Partners & GMK, Inc.; to permit the Plaintiff to depose Burgess and MacKinnon regarding the personal jurisdiction limits this Court may exercise over All Debt Traders, LLC. and Portfolio Partners & GMK, Inc.; and for all other relief that is just.

Respectfully submitted this 18<sup>th</sup> day of July, 2008.

BROCK & STOUT




---

David G. Poston, Esq.  
Walter A. Blakeney, Esq.  
Michael D. Brock, Esq.  
Gary W. Stout, Esq.  
Post Office Drawer 311167  
Enterprise, Alabama 36330  
334-671-5555  
334-671-2689 Facsimile  
Email: [christal@circlecitylaw.com](mailto:christal@circlecitylaw.com)

**CERTIFICATE OF SERVICE**

I, the undersigned, hereby certify that I have this date served a copy of the foregoing upon the following via United States Mail, postage prepaid and fully addressed *and* by electronic mail 18<sup>th</sup> day of July, 2008.

Fern H. Singer  
Stacey A. Davis  
BAKER, DONELSON, BEARMAN  
CALDWELL & BERKOWITZ, P.C.  
420 North 20th Street, Suite 1600  
Birmingham, Alabama 35203-5202  
Email: [fsinger@bakerdonelson.com](mailto:fsinger@bakerdonelson.com)  
[sdavis@bakerdonelson.com](mailto:sdavis@bakerdonelson.com)

  
\_\_\_\_\_  
David G. Poston

Blake D. Andrews  
Starnes & Atchison, LLP  
100 Brookwood Place, 7th Floor  
P.O. Box 598512  
Birmingham, Alabama 35259  
Email: [bda@starneslaw.com](mailto:bda@starneslaw.com)

**David Poston**

---

**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Wednesday, June 11, 2008 10:52 AM  
**To:** Stacey Davis (sdavis@bakerdonelson.com)  
**Cc:** Fern Singer (fsinger@bakerdonelson.com)  
**Subject:** Streeter v. Burgess

Dear Stacey:

This confirms our discussion on June 10, 2008. Please advise me whether Burgess will consent to a deposition in Enterprise, Alabama.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

334-671-2044

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**David Poston**

---

**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Friday, June 13, 2008 12:06 PM  
**To:** Stacey Davis (sdavis@bakerdonelson.com)  
**Cc:** Fern Singer (fsinger@bakerdonelson.com); 'Lesley Bullock'  
**Subject:** Streeter v. Burgess

Dear Ms. Davis:

I left a voice mail pertaining to my attempt at scheduling the Burgess deposition. I will be in the office all day June 16-17, 2008. Please contact me at your convenience so that we may set about scheduling Burgess' deposition. My assistant, Lesley Bullock has access to my calendar. Mr. Stout is in the office as well. You may reach him at 334-671-5555.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

334-671-2044

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7/2/2008

**David Poston**

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**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Tuesday, June 17, 2008 2:24 PM  
**To:** Stacey Davis (sdavis@bakerdonelson.com)  
**Cc:** Fern Singer (fsinger@bakerdonelson.com)  
**Subject:** Streeter

Ms. Davis:

This is a follow up to my voice mail this date. Please contact my office so we may work to schedule the Doug Burgess deposition.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

334-671-2044

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**David Poston**

---

**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Tuesday, June 17, 2008 2:33 PM  
**To:** Stacey Davis (sdavis@bakerdonelson.com)  
**Cc:** Fern Singer (fsinger@bakerdonelson.com)  
**Subject:** Streeter

Ms. Davis:

This confirms our conversation wherein Mr. Burgess will avail himself to an Alabama deposition. My understanding is that you will check his schedule and provide dates. Please contact my office immediately if any of the information in this letter is contrary to your understanding.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

334-671-2044

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7/2/2008

**BAKER  
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BEARMAN, CALDWELL  
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WACHOVIA TOWER  
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PHONE: 205.328.0480  
FAX: 205.322.8007

[www.bakerdonelson.com](http://www.bakerdonelson.com)

STACEY A. DAVIS  
Direct Dial: 205.244.3800  
Direct Fax: 205.488.3800  
E-Mail Address: [sdavis@bakerdonelson.com](mailto:sdavis@bakerdonelson.com)

June 18, 2008

David G. Poston  
Brock & Stout  
PO Drawer 311167  
Enterprise, AL 36331-1167

Re: *Ruby Streeter v. Office of Douglas R. Burgess and Douglas R. Burgess, et al.*  
Civil Action No.: 1:07-cv-97-WKW

Dear Mr. Poston:

I am in receipt of your letter of June 17, 2008. This letter confirms that Doug Burgess will be made available for a deposition in Alabama, however, the deposition will take place in our offices in Birmingham, and not as stated in your letter in Enterprise, Alabama. As you know, we are under no obligation to bring Mr. Burgess to Alabama and are doing so as a courtesy to counsel.

We have taken your settlement offer under advisement and will be back in touch shortly.

Sincerely,



Stacey A. Davis

SAD:imj

B SAD 790395 v1  
2910402-000001 6/18/2008

JUN 20 2008  


**David Poston**

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**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Friday, June 20, 2008 4:48 PM  
**To:** Stacey Davis (sdavis@bakerdonelson.com)  
**Cc:** Fern Singer (fsinger@bakerdonelson.com)  
**Subject:** Streeter v. Burgess

Ms. Davis:

I received your letter regarding the Burgess deposition. Please provide me dates in which Burgess will be available.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

334-671-2044

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**David Poston**

---

**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Tuesday, June 24, 2008 4:51 PM  
**To:** Stacey Davis (sdavis@bakerdonelson.com)  
**Cc:** Fern Singer (fsinger@bakerdonelson.com)  
**Subject:** Streeter

Ms. Davis:

Please contact me to schedule deposition dates for Mr. Burgess.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

334-671-2044

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7/2/2008

**David Poston**

---

**From:** Davis, Stacey [sdavis@bakerdonelson.com]  
**Sent:** Wednesday, June 25, 2008 9:15 AM  
**To:** David Poston  
**Subject:** RE: Streeter

David

I am still trying to get dates for when my client is available in July for his deposition. I tried contacting him again this morning. As soon as I know something I will contact you.

Stacey

---

**From:** David Poston [mailto:david@circlecitylaw.com]  
**Sent:** Tuesday, June 24, 2008 4:51 PM  
**To:** Davis, Stacey  
**Cc:** Singer, Fern  
**Subject:** Streeter

Ms. Davis:

Please contact me to schedule deposition dates for Mr. Burgess.

Sincerely,  
***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

334-671-2044

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7/2/2008

**David Poston**

---

**From:** Davis, Stacey [sdavis@bakerdonelson.com]  
**Sent:** Tuesday, July 08, 2008 3:03 PM  
**To:** David Poston  
**Cc:** Singer, Fern  
**Subject:** Streeter v. Burgess

David

I have received your voice mail regarding deposition dates for Doug MacKinnon. I was under the impression you were going to be submitting written discovery for MacKinnon prior to taking any deposition. Are you still submitting written discovery?

Also, I am in receipt of your Notice of Deposition for Douglas Burgess. As stated in our prior correspondence, we have not agreed to put Mr. Burgess up for deposition in Enterprise, Alabama as per your Notice. Moreover, your notice is for both Douglas Burgess and the 30(b)(6) of the Office of Doug Burgess, LLC and the Law Office of Douglas Burgess, LLC. Neither your motion to compel discovery, nor the Court's Order directing discovery called for any 30(b)(6) depositions. Accordingly, we will be putting up Douglas Burgess in his personal capacity only at this time.

Finally, I see that you unilaterally set the date for Mr. Burgess' deposition for July 18, 2008. We have communications in to our client to see if that date is acceptable.

**Stacey A. Davis**

Attorney  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
420 20th Street North  
Wachovia Tower, Suite 1600  
Birmingham, AL 35203  
Direct: 205.244.3800  
Fax: 205.488.3800  
E-mail: [sdavis@bakerdonelson.com](mailto:sdavis@bakerdonelson.com)  
[www.bakerdonelson.com](http://www.bakerdonelson.com)

Baker, Donelson, Bearman, Caldwell & Berkowitz represents clients across the U.S. and abroad from offices in Alabama, Georgia, Louisiana, Mississippi, Tennessee, Washington, D.C. and a representative office in Beijing, China.

---

**From:** David Poston [mailto:david@circlecitylaw.com]  
**Sent:** Tuesday, July 08, 2008 11:15 AM  
**To:** Davis, Stacey  
**Subject:** MacKinnon

Stacey:

I left a voice mail regarding dates for MacKinnon's deposition. Please contact your client and advise me when he will be available.

Sincerely,  
***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167

7/15/2008

**David Poston**

---

**From:** Davis, Stacey [sdavis@bakerdonelson.com]  
**Sent:** Tuesday, July 08, 2008 11:18 AM  
**To:** David Poston  
**Cc:** Singer, Fern  
**Subject:** RE: Doug MacKinnon

David

We are not authorized to accept service of the summons and complaint on behalf of Doug MacKinnon.

**Stacey A. Davis**

Attorney  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
420 20th Street North  
Wachovia Tower, Suite 1600  
Birmingham, AL 35203  
Direct: 205.244.3800  
Fax: 205.488.3800  
E-mail: [sdavis@bakerdonelson.com](mailto:sdavis@bakerdonelson.com)  
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---

**From:** David Poston [mailto:david@circlecitylaw.com]  
**Sent:** Monday, July 07, 2008 6:03 PM  
**To:** Davis, Stacey  
**Subject:** Doug MacKinnon

Stacey:

Are you authorized to accept service of the summons and complaint as to Doug MacKinnon? I understand that service of the summons does not constitute waiver of your right to assert personal jurisdiction.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
[david@circlecitylaw.com](mailto:david@circlecitylaw.com)

334-671-2044

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7/15/2008

**David Poston**

---

**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Tuesday, July 08, 2008 3:35 PM  
**To:** 'Davis, Stacey'  
**Subject:** RE: Streeter v. Burgess

Stacey:

Given the delay from Burgess, I am beginning now to try and establish deposition dates for MacKinnon. I seems that I will not have time to wait on written discovery from MacKinnon and then attempt to schedule a deposition.

I left a message on your voice mail in an attempt to confer and resolve the issue of Burgess individually and Burgess in his representative capacity. Because the complaint alleges civil conspiracy, the plaintiff's position is that all avenues are open for deposing Burgess, both individually and corporately. I intend to proceed as such. Please contact me so that we can attempt to work this out without court involvement.

The Plaintiff's Motion to Compel Deposition Testimony has no bearing on the Notice of Deposition. Judge Coody denied my motion and ordered that "[c]ounsel for the parties are DIRECTED to hold not later than 20 days from the date of this order, the required good faith conference." We conferred several times.

Finally, I scheduled the deposition in Enterprise because your client would not give you dates. The plaintiff could not afford to wait any longer as she is under a very strict time deadline.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

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**From:** Davis, Stacey [mailto:sdavis@bakerdonelson.com]  
**Sent:** Tuesday, July 08, 2008 3:03 PM  
**To:** David Poston  
**Cc:** Singer, Fern  
**Subject:** Streeter v. Burgess

David

I have received your voice mail regarding deposition dates for Doug MacKinnon. I was under the impression you were going to be submitting written discovery for MacKinnon prior to taking any deposition. Are you still submitting written discovery?

Also, I am in receipt of your Notice of Deposition for Douglas Burgess. As stated in our prior

7/15/2008



correspondence, we have not agreed to put Mr. Burgess up for deposition in Enterprise, Alabama as per your Notice. Moreover, your notice is for both Douglas Burgess and the 30(b)(6) of the Office of Doug Burgess, LLC and the Law Office of Douglas Burgess, LLC. Neither your motion to compel discovery, nor the Court's Order directing discovery called for any 30(b)(6) depositions. Accordingly, we will be putting up Douglas Burgess in his personal capacity only at this time.

Finally, I see that you unilaterally set the date for Mr. Burgess' deposition for July 18, 2008. We have communications in to our client to see if that date is acceptable.

**Stacey A. Davis**

Attorney  
Baker, Donelson, Bearman, Caldwell & Berkowitz, P.C.  
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Wachovia Tower, Suite 1600  
Birmingham, AL 35203  
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[www.bakerdonelson.com](http://www.bakerdonelson.com)

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---

**From:** David Poston [mailto:[david@circlecitylaw.com](mailto:david@circlecitylaw.com)]  
**Sent:** Tuesday, July 08, 2008 11:15 AM  
**To:** Davis, Stacey  
**Subject:** MacKinnon

Stacey:

I left a voice mail regarding dates for MacKinnon's deposition. Please contact your client and advise me when he will be available.

Sincerely,  
***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
[david@circlecitylaw.com](mailto:david@circlecitylaw.com)

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7/15/2008

**David Poston**

---

**From:** David Poston [david@circlecitylaw.com]  
**Sent:** Tuesday, July 15, 2008 2:51 PM  
**To:** 'Singer, Fern'; 'Davis, Stacey'  
**Subject:** Streeter v. Burgess

Fern:

This is the follow up on my email from this morning. I believe that we have in good faith conferred sufficiently to satisfy the requirements of Rule 26. To clarify the plaintiff's position, we need deposition dates for Mr. Burgess and Mr. MacKinnon. On June 10, 2008, after Judge Coody denied the Plaintiff's Motion to compel deposition testimony, and after Judge Watkins allowed the plaintiff an opportunity to depose both Burgess and MacKinnon, I immediately began seeking deposition dates for Burgess. Not counting our discussions, there have been fifteen telephone calls or emails regarding the specific subject of deposing Burgess. This is my last attempt to request deposition dates for Burgess and MacKinnon. If I do not have proposed dates by the close of business this Thursday, I will once again Notice Mr. Burgess' deposition. If he does not attend the third deposition, I will have no choice but to seek sanctions against Burgess.

As to MacKinnon, if I do not have proposed dates, I will also notice his deposition and will also seek sanctions if he fails to appear at the deposition.

There was also a dispute as to whether I could depose Burgess both individually and as a corporate representative of his LLC's. I continue to reiterate the pLaintiff's position that the civil conspiracy complaint opens all avenues to Burgess, both individually and corporately. Please contact me so that we may resolve this issue.

Please speak with both Burgess and MacKinnon so that we do not have to involve the court in mundane matters such as depositions. Thank you for your help in this matter. As I mentioned to you yesterday, I appreciate all you are doing to obtain deposition dates.

Sincerely,

***David G. Poston***

David G. Poston  
BROCK & STOUT  
P. O. Drawer 311167  
Enterprise, AL 36331-1167  
david@circlecitylaw.com

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7/16/2008